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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,365	09/08/2003	Anthony J. Baerlocher	0112300-1424	9501

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EXAMINER	
HARPER, TRAMAR YONG	

ART UNIT	PAPER NUMBER
3714	

NOTIFICATION DATE	DELIVERY MODE
07/14/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No.	Applicant(s)	
	10/657,365	BAERLOCHER, ANTHONY J.	
	Examiner	Art Unit	
	TRAMAR HARPER	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24 and 31-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24 & 31-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/11/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Examiner acknowledges receipt of amendment/arguments filed 2/11/08. The arguments set forth are addressed herein below. Claims 1-24 & 31-40 are currently pending, Claims 25-30 & 41-43 have been withdrawn, and Claims 1-2, 14-24, 31, & 33 have been currently amended.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim1, 3-15, 17-24, & 31-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Cregan et al (US 7,273,415) in view of Kaminkow (US 6,511,375).

Claims 1, 15, 31-32, 34, & 36-37: Cregan discloses a gaming device that comprises of a plurality of different levels of selections wherein a player is given a predetermined amount of picks to pick selections of the different levels. The player uses these picks throughout each level, including a final level, until the picks are exhausted. The picks include a first result/pick or "pay symbol" which includes a pay outcome and a count against the number of picks, a second result or "advance symbol" which includes a move to a next selection level and a count against the pick counter, a third result/pick which includes a "repeat pick" wherein a player can pick from the same selection level more than once which also includes a count against the pick counter, and a forth

result/pick which includes a "skip pick" (Col. 15:62-64) which involves a move to a next level without a count against the pick counter. After each pick the award or outcome is revealed to the player. After a player has exhausted the available picks the player obtains or accumulates the total awards (Col. 14:58-Col. 16:59).

However, Cregan fails to discloses displaying for each level a clue associated with the level and a plurality of masked selections, wherein each masked selection is associated with one of a plurality of responses to the clue. However, Kaminkow discloses a game comprising a plurality of selections groups wherein each selection group is associated with a theme/clue and wherein a player selects a masked selection response to the clue. For example, each selection group or level consists of various food groups such as appetizers, soups, chicken dishes, etc. and a player is advised to choose for a particular group (example is asked questions), wherein if advised to pick an appetizer the player must pick selections comprising an appetizers (Col. 11:5-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the selection game of Cregan to include the theme/clues including response selections of Kaminkow to add to the entertainment value of the game itself. Providing various themes would increase the appeal of the game and promote further game play.

Claims 3 & 17: Cregan further discloses a final level which includes at least one first/pay outcome associated with at least one pick within the final level (see above).

Claims 4, 18, & 33: Cregan discloses that a player picks from the same level until picking an advance indicator e.g. a player can repeat picks up to as many times as the

allotted picks allow until picking an advance indicator (see above). This also encompasses the player picking from a selection level at least twice and repeating the process in the next nexl level.

Claim 5: Cregan discloses that the final selection level can include multiple selections, therefore, if a third result occurs wherein a player picks from the final selection group and the player has more picks available then the player can place an additional pick within the final selection group. This encompasses an additional pick made available only after the player has pick from each selection group considering that the player has to at least make one pick in order to reach the final selection group (Col. 15:58-60 and above).

Claims 6-11, 19-21, 35, & 38: Cregan discloses that the advance indicator furthermore can provide and additional award to the player (Col. 15:30-35). Cregan discloses that average pay outcomes for each subsequent level are increased (Col. 15:12-20). Furthermore, Cregan disclose that if a player does not pick a advance or skip outcome the player can additionally pick a third result that includes picking an additional award from the same level (see above). Cregan also discloses that the advance/skip indicator includes an additional award/value.

Claims 12-13, 22-23, & 39-40: Cregan discloses the game is provided via a data network through the internet or a computer storage device (Col. 5:58-Col. 6:30).

Claims 14 & 24: Cregan discloses that the controller determines the random positions and values of the picks each time the player plays the bonus round e.g. predetermined before play (Col. 5:50:56).

Claims 2 & 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cregan (US 7,273,415) in view of Kaminkow (US 6,511,375) in further view of Hughs-Baird (US 2003/0045349).

Claim 2 & 16: Cregan in view of Kaminkow discloses the above with respect to claims 1 & 15, but fails to disclose a "stay" type pick that enables a player to pick another pick from the same level without a count against the pick counter. Cregan discloses that the above gaming system is geared towards enhancing the level of player excitement and enjoyment (Col. 2:23-25). Cregan discloses that player enjoyment is enhanced because of the multiple opportunities a player has at achieving game credits (Col. 3:14-17). However, Hughs-Baird discloses a similar award selection game wherein a player is given a predetermined number of picks to pick and accumulate various awards (Abstract). Hughs-Baird discloses a "pick again" pick, which enables a player to make an additional pick without a count against the pick counter (¶ 58). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the gaming system of Cregan with the "pick gain" option of Hughs-Baird to provide a further incentive for the player to play the game. Such a modification would increase the opportunities a player has to achieve an award and therefore enhance the level of excitement and enjoyment.

Response to Arguments

Applicant's arguments with respect to claims 1-24 & 31-40 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that there is no suggestion to combine the references, particularly Cregan in view of Hughs-Baird, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references are drawn toward blind picking of awards and both references add various types of picks to the game to add to the variety and entertainment value of the game and provide various opportunities for a player to accumulate awards. Cregan discloses that player enjoyment is enhanced because of the multiple opportunities a player has at achieving game credits (Col. 3:14-17). However, Hughs-Baird discloses a similar award selection game wherein a player is given a predetermined number of picks to pick and accumulate various awards (Abstract). Hughs-Baird discloses a “pick again” pick, which enables a player to make an additional pick without a count against the pick counter (¶ 58). As such, the references are considered analogous and would have obvious to combine.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAMAR HARPER whose telephone number is (571)272-6177. The examiner can normally be reached on 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ronald Laneau/
Primary Examiner
Art Unit 3714

TH 07/07/08